

REMARKS/ARGUMENTS

Responsive to the Office Action restriction requirement mailed November 28, 2005, Applicant provisionally elects Embodiment Group I, drawn to Claims 1-12.

The election is made with traverse inasmuch as it would appear that all the claims in the application are directed to but a singular inventive concept with respect to tile installation.

It would seem that the Examiner's restriction requirement is nothing more than an attempt to secure an additional patent application filing for but a single invention.

In *In re Lee*, 199 U.S.P.Q. (BNA) 108, the petitioner argued that the claims which the Examiner was requiring restriction on would not be patentable over the remaining claims. In reversing the Examiner's requirement for restriction, the Commissioner stated:

“ . . . it is important from the standpoint of public interest that no restriction requirements be made which might result in the issuance of two patents to the same invention.

The nullification of double patenting as a ground of rejection provided for in the third sentence of 35 U.S.C. 121 imposes a heavy burden on the Office to guard against erroneous requirements for restriction where the claims define essentially the same invention and which if acquiesced in might result in more than one patent for

essentially the same invention with attendant prolongation
of patent monopoly.”

Again, in the instant case, it is submitted that there is but a single inventive concept and that all of the claims cover that single inventive concept and, while there may be different embodiments of the same invention, it is submitted that all of the claims should be examined. Multiple embodiments of a single invention may be included in the same design application where they are patentably indistinct. See *In re Rubinfield* 270 F.2d. 391, 123 USPQ 210 (CCPA 1959).

However, as indicated solely to advance the prosecution of the case, if the Examiner is still adamant in suggesting that there are three separate inventions, applicant elects Claims 1-12 Group I.

The Examiner is respectfully requested to reconsider the restriction requirements in view of the foregoing.

If the Examiner believes that a telephone or other conference would be of value in expediting the prosecution of the present application, enabling an Examiner's amendment or other meaningful discussion of the case, Applicants invite the Examiner to contact Applicants' representative at the number listed below.

With the above-referenced changes, it is believed that the application is in a condition for allowance; and Applicants respectfully request the Examiner to pass the application on to allowance. It is not believed that any additional fees are due;

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however, in the event any additional fees are due, the Examiner is authorized to charge

Applicant's Attorney's Deposit Account No. 03-2030.

Respectfully submitted,

CISLO & THOMAS LLP

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Enclosure

Ack. Postcard

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